SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1940

No. 323

AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE, PETITIONER

VERSUS

CITY OF SANFORD, FLORIDA, ET. AL. RESPONDENTS

BRIEF ON BEHALF OF RESPONDENT CITY OF SANFORD, FLORIDA, ON PETITION OF AMERICAN NATIONAL BANK OF NASHVILLE, TENNESSEE, FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

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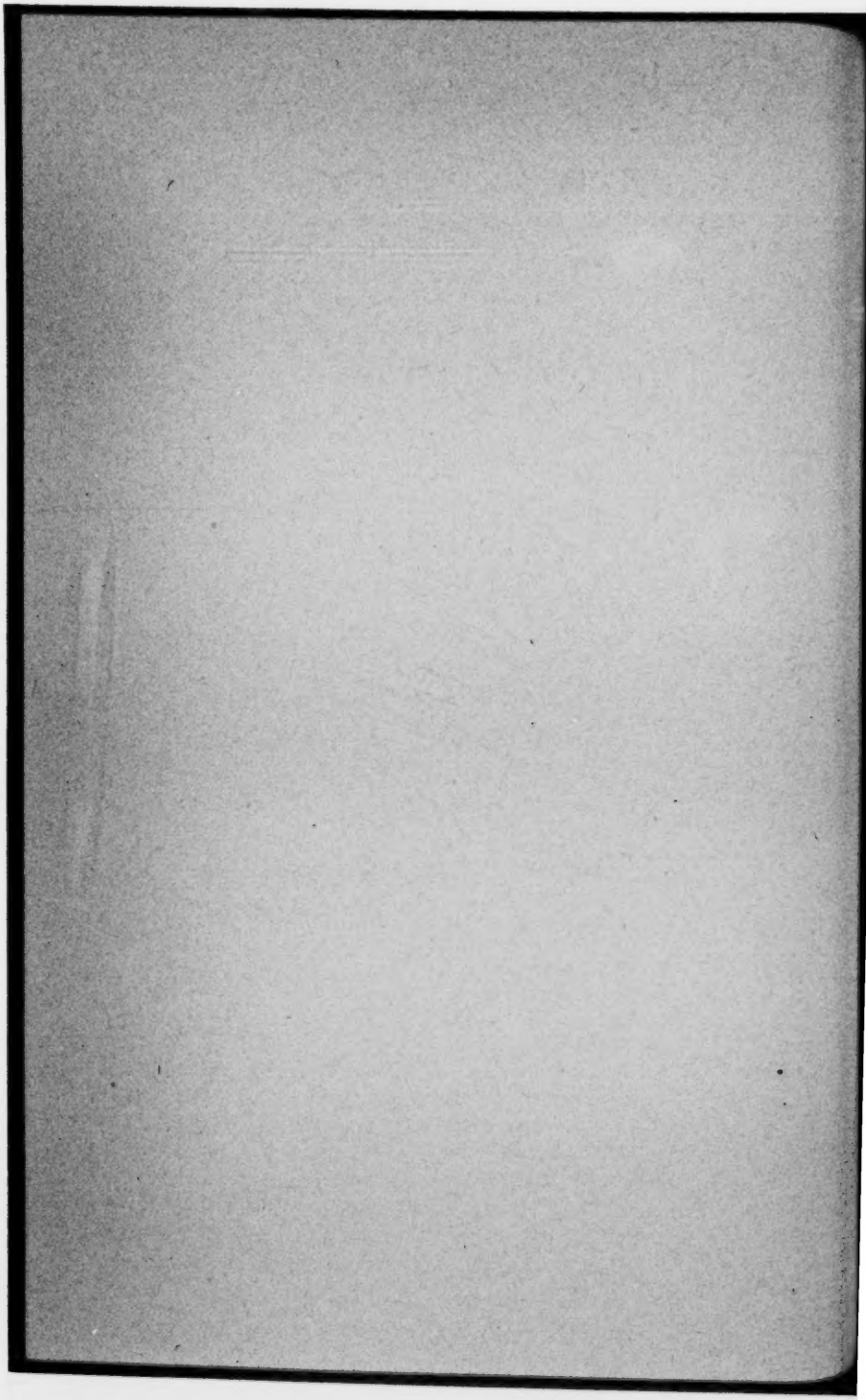

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PRELIMINARY STATEMENT

On pages 15 to 21 of the petition for writ of certiorari in this case the petitioner assigns its purported reasons why a writ of certiorari should issue. It has argued these reasons in its petition and has also filed a separate brief in support thereof. It asserts that the questions involved are important ones of federal law arising under the Bankruptcy Act, which have not been settled by this Court, but respondent contends that the questions have been settled by the Court of Appeals of the Fifth Circuit in a logical, clear and forceful opinion, 112 Fed. Rep. (2nd) 435, and that Section 83 (j) (11 U. S. C. A. 403 (j) of the Bankruptcy Act which is the Statute in question is so obviously a constitutional exercise of the powers of Congress under its authority to establish a uniform system of bankruptcy, that no conflict among the Courts will arise and that if the question is raised in other Courts the decision in the present case by the Circuit Court of Appeals of the Fifth Circuit would constitute a precedent which would be promptly and unqualifiedly followed by such other Courts. The decision is in line with the progressive constructions which have been adopted by the Courts throughout the history of bankruptcy legislation.

So far as the respondent has been able to ascertain there have been no other decisions by any of the Courts on the constitutionality or applicability of Section 83 (j) of the Bankruptcy Act and the respondent contends that there is no conflict of any kind between the decision in the present case and any of the prior decisions of this Court or other Federal

Courts or the Supreme Court of the State of Florida or statutes of the State of Florida.

Reasons (b), (c), (d) and (e) assigned for issuance of the writ are also argued by petitioner under the assignments of error set forth in its brief.

The respondent, City of Sanford, Florida, replies as follows to the petition and brief:

SUMMARY OF BRIEF

The only questions involved in this case are:

1. Whether or not Sub-section (j) of Section 83 of the Bankruptcy Act, as amended, 11 U. S. C. A. Sec. 403 (j) providing that the written consent of the holders of securities outstanding as the result of the partial completion or execution of a plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of the securities affected by such plan of composition is a constitutional exercise of the powers of Congress under its authority to establish a uniform system of Bankruptcy throughout the United States, and

2. Whether or not it is applicable to taxing units which have partially completed a plan of composition before the enactment of Sub-section (j) of the said Section 83 of the Bankruptcy Act, as amended on June 22, 1938.

The Respondent, City of Sanford, Florida, contends:

a. That said Sub-section (j) of Section 83 of the Bankruptcy Act, as amended, is a constitutional

exercise of the power of Congress in the matter of Bankruptcy legislation. and

b. That said Sub-section (j) is retroactive and applicable to any taxing unit which has partially completed or executed a plan of composition prior to its enactment.

In this reply brief we will follow the manner of presentation of the case adopted by the petitioner.

I.

RELIEF SOUGHT

The petitioner, American National Bank of Nashville, Tennessee, has correctly stated the relief sought in this proceeding, which is to review a judgment of the Circuit Court of Appeals, Fifth Circuit, affirming an order of the United States District Court for the Southern District of Florida, upholding the constitutionality of Sub-section (j) of Section 83 of the Bankruptcy Act, which Sub-section was passed as an amendment to the Chandler Act of June 22, 1938.

The opinion of the lower court sought to be reviewed herein will be found in 112 Federal Reporter, 2d Series p. 435.

II.

BASIS OF JURISDICTION OF THIS COURT.

The Respondent, City of Sanford, Florida, agrees that this Court has jurisdiction of the matter under the sections of the Judicial Code, Bankruptcy Act, Rule and Decisions of this Court, cited by Petitioner.

III.

CONCISE STATEMENT OF THE CASE.

The record discloses (R. 1) that on the first day of July, 1929, the respondent, City of Sanford, Florida, had an outstanding bonded indebtedness of $7,003,000.00; that this amount had been reduced to $5,900,000.00 as and of the first day of February, 1937 (R. 2); that on the first day of February, 1937, the respondent adopted Resolution No. 499 (R. 23) providing for a composition of its last mentioned indebtedness by the issuance of Refunding Bonds in the total amount of $5,900,000.00, said Refunding Bonds to be designated as Refunding Bonds, Series A in the principal amount of $5,274,000.00 (R. 28) and Refunding Bonds, Series B, in the principal amount of $626,000.00 (R. 28) Refunding Bonds, Series A, to be exchanged for all the outstanding bonds of respondent except certain "Public Utility Bonds" and "Improvement Bonds Series CC", which were water works bonds of respondent. All of the Refunding Bonds were to be dated March 1, 1937, and to mature September 1, 1977 (R. 27); Refunding Bonds, Series A, to bear interest at rates from 1% to 2½% per annum and Refunding Bonds, Series B, to bear interest at rates from 2% to 3% per annum (R. 29).

At the time of the filing of the petition respondent had bonds outstanding which had not been exchanged for Refunding Bonds, Series A, in the amount of $231,000.00 (R. 7) and bonds outstanding which had not been exchanged for Refunding Bonds, Series B, in the amount of $15,000.00 (R. 7).

The Petitioner has correctly stated that after the first Municipal Bankruptcy Act had been declared

unconstitutional and before the adoption of the present Municipal Bankruptcy Act or Section 83 (j) thereof, the Respondent, City of Sanford, Florida, offered to any of its bondholders willing to accept the same, certain Refunding Bonds in exchange for a like principal amount of "old bonds" but this Respondent does not agree that said offer was not a plan of composition within the meaning of the Bankruptcy Act nor that the restoration of the bondholders to the status quo ante was prohibited for the reasons stated by Petitioner; nor that the Circuit Court of Appeals fell into error in the manner stated by Petitioner; nor that at the date of the adoption by Congress of the second Municipal Bankruptcy Act the municipal indebtedness of the City of Sanford really consisted of two series of bonds, "old bonds" and "refunding bonds", nor that the rights of the two series were materially different.

The plan of composition as stated by Petitioner did not propose to change in any manner the rights of the holders of "refunding bonds" but did provide for an exchange of refunding bonds for a like principal amount of the "old bonds".

The City of Sanford attached to its petition the written consents of the holders of "refunding bonds", amounting to more than 51% of its indebtedness, and which were "securities outstanding as the result of partial completion or execution" of its plan of composition, and relies upon such written consents to confer jurisdiction upon the Court.

The Petitioner, American National Bank of Nashville, Tennessee, and two other non-assenting bondholders, namely, C. J. Root and Fiduciary Counsel, Inc. filed answers and Motions to Dismiss

the petition upon the ground that Sub-section (j) of Section 83 of the Bankruptcy Act was not applicable and, if applicable, was unconstitutional, (R-93-128) C. J. Root and Fiduciary Counsel, Inc. have accepted refunding bonds and been dismissed from the proceedings.

The United States intervened and the Attorney General's office filed a brief and made an oral argument in the matter.

IV.

ARGUMENT

The Petitioner has assigned eight alleged errors. We believe that it will expedite a consideration of this brief to repeat the assignments of error.

ASSIGNMENT NO. (1).

> The Court of Appeals erred in holding that "nothing in the acceptance (of the plan of voluntary adjustment) prevents the City and the acceptors from undoing the whole plan", since (a) the statutes of Florida, (b) the decisions of the Supreme Court of Florida, (c) the City charter of Sanford, and (d) the express provisions of the "plan of voluntary adjustment", all prohibit restoration of the status quo ante.

It seems to respondent that the question raised by this assignment is premature as it should be determined when the necessity or propriety for the restoration of the status quo ante arises, but we find nothing in the statutes of Florida, the decisions of the Supreme Court of Florida, the City Charter of Respondent or the express provisions of the plan of composition prohibiting a restoration of the status

quo ante should it be necessary to do so. However. the Municipal Bankruptcy Act provides that the plan of composition may be modified and we feel that that is what the Circuit Court of Appeals had in mind when it referred to "undoing the whole plan." If necessary, the plan could be modified without a restoration of the status quo ante.

The Florida statute under which the refunding bonds were issued, namely, Chapter 15,772 of the Laws of Florida, 1931, Sections 8 and 14, only forbids the issuance of refunding bonds for a greater amount of principal and accrued interest for the debts to be refunded and a restoration of the status quo ante, if it should become necessary, would not violate the Refunding Act, and a modification of the plan, if necessary, would not necessarily result in issuing bonds in an amount in excess of the obligations refunded. The Supreme Court of the State of Florida in the case of City of Miami v. State 190 Sou. 774 (brief, page 9) only outlined the mechanical and clerical procedure for the handling of refunding bonds, which would of course call for a surrender and cancellation of old bonds, and the decision in that case is in no way in conflict with the bankruptcy act in question.

The Petitioner quotes Section 123 (Brief, page 10) of Chapter 9897, Laws of Florida, 1923, authorizing the City Commission to issue bonds in the first instance but this section in no way conflicts with the Refunding Act of the State of Florida, nor would it prevent a restoration of the old indebtedness if that became necessary and proper.

Said Section 123 was amended by Chapter 11718, Laws of Florida, 1925, so as to remove the debt limit.

On page 13 of the Petitioner's brief appears a misstatement, through oversight, of the record. The city at the time of the filing of its petition had bonds exchangeable for refunding bonds, Series A, in the sum of $231,000.00 and bonds exchangeable for refunding bonds, Series B, in the sum of $15,000.00 and not bonds exchangeable for refunding bonds, Series B, in the sum of $231,000.00.

ASSIGNMENT NO. (2)

> The Court of Appeals erred in holding that 83 (j) of the Municipal Bankruptcy Act is applicable not only to a partially completed plan of composition, but also to a partially executed plan of voluntary adjustment, although said "plan of voluntary adjustment" was (a) executed irrevocably by a large majority of the bondholders at a time when there was no Municipal Bankruptcy Act in existence; (b) contemplated no coercion of non-assenting bondholders; (c) contemplated no submission to or approval by any Court; and (d) did not contemplate collective action, but was offered to and accepted by individual bondholders, each being permitted to act and acting finally and irrevocably for himself, regardless of the action of the other bondholders.

In the above assignment of errors Petitoner stresses what it terms to be a difference between a voluntary adjustment and a plan of composition as those words are used in Sub-section (j). It also cites the case of In Re: City of West Palm Beach, 96 Fed. (2nd.) 85, in which the Court referred to the distinction between a plan of composition and a proposed adjustment out of Court, but the Court also

said in that case that such proposed adjustment out of Court might become a plan of composition by being presented to the Court, and Sub-section (j) authorizes the presentation to the Court of a plan of composition, which has been partially completed or executed, but which the Court in the West Palm Beach case held could not be done, which case was decided before the passage of Sub-section (j). Sub-section (j) was enacted for the express purpose of overcoming the effect of the decision in the West Palm Beach case. A brief history of the enactment of the statute is shown by the Journal of Congress and is as follows:

June 10, 1938

"Mr. Chandler, from the Committee on the Judiciary, submitted the following report to accompany H. R. 10753. The Committee on the Judiciary, to whom was referred the Bill (H. R. 10753) to amend 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and acts amendatory thereof and supplemental thereto, after consideration, report the same favorably to the House with recommendation that the Bill do pass.

"The Bill would amend the Municipal Bankruptcy Act, (Ch. 10 of the Act of 1898 as amended, Public Law 302,75 Cong.) to permit compositions by cities, etc., in accordance with the purposes of the original Act (Ch. 10).

"The necessity for the amendment arises by virtue of the decision of the Circuit Court of Appeals, Fifth Circuit, on April 14, 1938, in the West Palm Beach, Florida, case where it

was held that the Act permits only plans of composition which are wholly executory, and that evidence of indebtedness already exchanged under the plan prior to the filing of the petition could not be included in computing the necessary percentages of securities held by consenting creditors to declare the plan operative.

"H. R. 10753 would permit the Court to include new refunding bonds already exchanged under the plan of composition when figuring the percentages of consenting creditors, regardless of whether such exchange was completed before or after the filing of the petition.

"In the West Palm Beach case about 85 percent of new bonds had been exchanged prior to filing the petition. The plan cannot be enforced under the Circuit Court of Appeals case unless 66-2/3 percent of the remaining 15 percent give their approval, thus effectively preventing the operation of the Act of 1937."

It was wholly competent for the Congress to overcome by the enactment of Sub-section (j) the technical distinction that may have once existed between a plan of composition and a voluntary adjustment. This Court itself has held that under the provisions for private composition the theory of the composition is purely of contract,—an offer and an acceptance, Meyers v. International Trust Co. 273 U. S 380; 71 L. Ed. 672; 47 Sup. Ct. 372.

In the case of In Re: Lane, 125 Fed. 772, the Court in speaking of a composition said: "It is a proceeding voluntary on both sides by which the debtor of his own motion offers to pay his creditors a certain percentage of their claims in exchange for

a release from his liabilities . . . . . Composition is thus treated, even in the act, as in some respects outside of bankruptcy" and the Court also said in the case referred to that "Except for this coercion of the minority the intervention of the Court of Bankruptcy would hardly be necessary."

In the case of Campbell v. Allegheny Corporation 75 Fed. (2d) 947, a voluntary plan of refinancing was begun prior to the enactment of the original section 77 B of the Bankruptcy Act and a large number of creditors had accepted the same. After the passage of Section 77 B the same plan was submitted as a plan of re-organization. It was contended in that case that the plan was a voluntary one of adjustment but the Court overruled that contention and held that it was immaterial that the plan was begun and consents thereto obtained prior to the enactment of section 77 B.

The respondent submits that there never was in fact the distinction between a voluntary adjustment and the plan of composition as contended by petitioner, but if such were true Congress destroyed such distinction by the enactment of Sub-section (j) as it related to taxing units proceeding under the municipal bankruptcy act.

ASSIGNMENT NO. (3)

The Court of Appeals erred as a matter of law in failing to hold that holders of "old bonds" and holders of "refunding bonds" are in different classifications and hence consents of one class may not be used to coerce members of the other class.

It is the contention of Respondent, City of Sanford, Florida, that until the plan of composition is wholly consummated, the holders of refunding bonds still represent the indebtedness evidenced by the bonds for which the refunding bonds were exchanged and Sub-section (j) continues them in their original classification. Refunding bonds are in fact only a continuation of the original obligations. State Ex Rel Pinellas County against Sholtz 115 Fla. 561; 155 Sou. 736. State against Bay County 116 Fla. 656; 157 Sou. 1, The Respondent submits also that Subsection (j) of Section 83 of the Bankruptcy Act was in fact an amendment of the preceeding sections as to any partially completed plan of composition and a bankruptcy proceeding by a taxing unit can be worked out under the amendment in harmony with the other sections. It was competent for Congress to do this as a matter of law and in the exercise of its bankruptcy powers.

Petitioner cites the case of State ex rel Garland v. City of West Palm Beach, 193 So. 297, in which the Court held that a holder of unrefunded bonds could not compel the payment of such bonds out of ad valorem taxes levied to pay refunding bonds, but the Court did not pass upon the relative positions of refunding bonds and unrefunded bonds under the bankruptcy statute or undertake to say that the holders of refunding bonds constitute such a different class of creditors that a plan of composition could not be completed after they had accepted refunding bonds.

All of the obligations of respondent involved in this proceeding were and are general obligations for which respondent's full faith and credit are pledged.

ASSIGNMENT NO. (4)

The Court of Appeals erred in ruling that the written acceptances of holders of "refunding bonds" who are in no wise affected by the "plan of composition" can be considered in computing 51% of acceptances required by the Municipal Bankruptcy Act, Section 83 (a); (11 U. S. C. A. Sec. 403).

The Petitioner stresses under this assignment the provisions of the Municipal Bankruptcy Act defining the term "security affected by the plan" and contends the refunding bonds are not securities affected by the plan. As hereinbefore pointed out, the respondent contends that this is a proceeding for the completion of its plan of composition and it was competent for Congress to say that securities outstanding as the result of the partial completion or execution of the plan of composition are securities affected thereby.

The Circuit Court of Appeals disposed of all of the contentions of the petitioner, emphatically declaring that they rejected "as wholly without merit" petitioner's first and second contentions that the amendment was not intended to, and does not in terms, authorize the filing and, if the conditions of the act are met, the approval of the voluntary plan, as a plan of composition in bankruptcy.

The petitioner contends and has contended all along that the decision of the Circuit Court of Appeals in the West Palm Beach case is still applicable. This contention was likewise disposed of by the lower court as follows:

"That the amendment was intended to reach and provide a remedy for the precise situation in which

the City of Sanford finds itself, we think there can be no doubt. From the report of the Committee of the Judiciary accompanying H. R. 10,752, it plainly appears it was passed to meet the situation dealt with in our opinion in Re City of West Palm Beach, Florida, 5 Cir., 96 F. 2d 85. We think it equally clear that the amendment, if valid, is effective to meet and provide a remedy for that situation."

The lower court also rejected the contention of the petitioner that sub-section (j) deprives petitioner of vested rights, pointing out in clear and forceful language that none of the petitioner's so-called vested rights were impaired.

The Court also said that there was no real difference between an agreement to accept refunding bonds and the actual acceptance thereof and that it was wholly competent for Congress to provide that persons already consenting could be counted in the compulsory plan, should a petition for composition be filed.

> "The power of congress to enact bankruptcy legislation is plenary subject only to the due process clause."
>
> In re Baltimore & Ohio R. Co.
>
> 29 Fed. Supp. 608 Hn. 5.

It was contended in the above case that the Railroad Adjustment Act was invalid as retroactive legislation in that it applied to a limited class of railroads having an acquired and particular status prior to the passage of the act, but this claim was held to be without merit.

It was likewise contended in the Baltimore & Ohio case above referred to that the non-assenting

creditors constituted a separate class but this claim was also rejected. The court said that, "The argument seems highly technical rather that substantial in relation to the large and important case here presented. But in addition, we consider the contention unsound." (Text 623).

In the case of In re Wichita Falls & Southern Ry. Co., 30 Fed. Supp. 750, it was held that the acceptance of a plan of adjustment by some bondholders and non-acceptance by a small minority did not create two classes of creditors. The court in that case said:

> "The contention seems to answer itself. It is a suggestion without weight and without even plausibility. . . . . .
>
> "If we put into the statute the contention of the objectors that the fact of objection creates a new class, we shall ingraft a new provision of percentages before a plan can fruit.
>
> "The Congress would hardly have worded the statute in the way we find it if it had been intended that those who object are, themselves, to become a class, and that a certain percentage of the objecting class shall be secured before a plan may be approved. That, upon its face, would defeat any arrangement and make ridiculous the highly important legislation."

The court in the case of In re Corcoran Irrigation District 27 Fed. Supp. 322, held:

> "A taxing agency is not to be denied relief under provision of Bankruptcy Act for composition of indebtedness because preliminary arrangements without which relief could not have

been sought were made before institution of proceedings or even before Act was in existence."

The Congress was cognizant of the deplorable financial condition of many of the taxing units of the country, 2019 of them being in default in January, 1934, (Mr. Justice Cardozo in Ashton v. Cameron Improvement District No. 1 56 Sup. Ct. 392, 292 U. S. 513, 80 L. Ed. 1309, 1315.). The facts before Congress at the time of the enactment of Sub-section (j) showed that recalcitrant minorities were preventing the completion of plans of composition or refunding agreements and that unless the taxing units were enabled to proceed under the bankruptcy laws to compel such recalcitrant minorities to accept a plan of composition after notice, hearing and approval thereof by the Court, such plans of composition would be rendered ineffectual and another collapse of the financial structure of the taxing units brought about or such recalcitrant minorities would be enabled to reap an undue advantage upon the sacrifices of the majority. The Respondent alleges in its petition (R. 15) that if it should be required to pay the unrefunded bonds in full it would default in its obligations on its refunding bonds. The holders of refunding bonds therefore are affected by the plan of composition as matter of fact and matter of law.

ASSIGNMENT NO. (5)

The Court of Appeals erred in ruling that holders of "old bonds", if creditors of a class whose rights are materially adversely affected by a proposed "plan of composition" may be coerced into accepting that "plan of composition" by holders of "refunding bonds", creditors of a different class whose rights are in no wise affected by the proposed plan of composition.

The Petitioner argues under this assignment that the Respondent's plan of composition is not as contemplated by the Municipal Bankruptcy Act because it does not provide for any changes in the status of the refunding bonds. The plan of composition was the one adopted on February 1, 1937, (R. 23-47). At that time the refunding bonds had not been exchanged for old bonds. Therefore, of course, the plan did not provide for any change in the refunding bonds but for the issuance of refunding bonds to be exchanged for old bonds and the present proceeding is simply one to complete that plan as respondent is especially authorized by Sub-section (j) to do.

The Petitioner still insists under this assignment that the creditors holding refunding bonds are in a different class from those holding unrefunded bonds. The respondent re-asserts its contention that the holders of refunding bonds are not creditors of a different class and that their relative position under Subsection (j) is the same as it was before they exchanged their bonds for refunding bonds.

ASSIGNMENT NO. (6)

The Court of Appeals erred in failing to hold (a) that if the plan sought to be confirmed was the plan of February 1, 1937, (R. 23). it was necessarily not a plan of composition within the meaning of the Municipal Bankruptcy Act or Section 83 (j) thereof, (b) that if the plan sought to be confirmed was the plan of January 28, 1939, (R. 1), the holders of the "refunding bonds" were not creditors affected by the plan and their consents can not be used to coerce creditors who are affected by the plan and who are in a separate classification.

The Petitioner asserts under this assignment that because the Respondent proposed its original plan of adjustment on February 1, 1937, at a time there was no Municipal Bankruptcy Act in existence, the plan therefore could not have been a plan of composition within the meaning of the Municipal Bankruptcy Act, and also for the further reason that it did not contemplate submission to or approval by any Court or coercion of any non-assenting bondholders.

Sub-section (j) puts taxing units which have partially composed their indebtedness and those which have not on a parity.

The history of the enactment of Sub-section (j) shows that it was the intention of the Congress to meet just such a situation as that of Respondent and other taxing units which had partially completed a plan of composition and it is not material that there was no reference in the plan to bankruptcy or coercion of the non-assenting bondholders. As hereinbefore pointed out the statute was passed to overcome the decision of the Circuit Court of Appeals in the West Palm Beach case. In speaking of Sub-section (j) the Circuit Court of Appeals in the case of Vallette v. City of Vero Beach, 104 Fed. (2d) 59, says

> "During this time, the first Municipal Bankruptcy Act having been held unconstitutional, bankruptcy relief was not in contemplation, but on April 25, 1938, the case of United States vs. Bekins, 304 U. S. 27,58 Supreme Court 811, 82 Law Ed. 1137, was decided, upholding what is now Chapter IX of the Bankruptcy Act, and on June 22, 1938, the Chandler Act was approved, which added to Section 83, the Sub-section (j), 11 United States Code Annotated

Section 403 (j), which expressly allows the perfection in bankruptcy of a plan of composition begun before. The plan made for the City of Vero Beach was thereupon presented to the Court." (text p. 61)

"The effort at refunding began in December, 1936. The agent printed, had executed and validated the refunding bonds or most of them before bankruptcy was contemplated." (text p. 64)

In the case of Getz v. Edinburg Consolidated School District, 101 Fed. (2nd) 734, hn. 4, the Court held:

"A plan of composition of indebtedness offered by Consolidated Independent School District in Texas presented practical business problems to be decided on equitable grounds rather than legal technicalities."

At this point we call the Court's attention to the report of the Special Master to whom was referred the legal questions arising in a preliminary way in the matter (R. 132-137). The Master's report is a logical, and, we submit, correct view of the matter.

The Bankruptcy Statutes have been liberally construed to meet changing conditions:

"The fundamental and radically progressive nature of these extensions becomes apparent upon their mere statement; but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution. Taken altogether, they demonstrate in a very striking way the capacity of the bankruptcy clause to meet new conditions

as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day. And these acts, far-reaching though they be, have not gone beyond the limit of congressional power; but rather have constituted extensions into a field whose boundaries may not yet be fully revealed."

Continental Illinios National Bank and Trust Company v. Chicago, etc.
294 U. S. 648
55 S. Ct. 595, 604
70 L. Ed. 1110,1125

"Power granted to Congress over subject of bankruptcy is plenary, and must be interpreted not in light of conditions with which framers of constitution were familiar, but in light of what is required under modern conditions to deal adequately with relationship existing between embarrassed debtors and their creditors".

Campbell v. Alleghany Corp.
75 Fed. (2nd) 947. Hn. 13.

"Congress may enact such bankruptcy legislation as it may deem wise and appropriate, constitutional grant of authority not being conditional nor limited, save that laws be uniform throughout the United States.

"Congress having express authority to enact bankruptcy legislation, was sole judge of means and their appropriateness to effectuate the pur-

pose of the legislation so long as means did not violate constitution."

In re Chicago R. I. & P. Ry. Co.
72 Fed. (2nd) 443
Hns. 1 and 4

"Bankruptcy power brings under control of Congress all phases of relationship between debtor financially embarrassed and his creditors and grant of power is not limited to forms in which power has heretobefore been exercised by Congress, or by laws relating to bankruptcy enacted in England or in American Colonies prior to adoption of the Constitution."

Campbell v. Alleghany Corp.
75 Fed. (2nd) 947, Hn. 8.

"The bankruptcy power is a broad power which should be exercised to meet new and changing conditions."

In re City of Ft. Lauderdale
23 Fed. Supp. 229, Hn. 5.

"Choice of means to carry into execution powers granted to Congress by the constitution rests with Congress, which may choose any means which in fact conduce to the exercise of such power."

In Re Contra Costa Irrigation District
10 Fed. Supp. 175 Hn. 8

"If by the statement that what the constitution meant at the time of its adoption it means

today, it is intended to say that the great clauses of the constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning: 'We must never forget that it is a constitution we are expounding.' (M'Culloch v. Maryland, 4 Wheat, 316, (4 L. Ed. 579,601). 'A constitution intended to endure for ages to come and consequently, to be adapted to the various crises of human affairs.' Id. p. 415. When we are dealing with the words of the constitution said this Court in Missouri v. Holland, 252 U. S. 416,433, 64 L. Ed. 641,647, 40 Supreme Court, 382, 11 A. L. R. 984, 'We must realize that they have called into life a being, the development of which could not have been forseen completely by the most gifted of its begetters . . . . . ' 'The case before us must be considered in the light of our whole experience and not merely in that of what was said one hundred years ago.' "

Home Building and Loan Association v. Blaisdell,
290 U. S. 398,442
54 Supreme Court, 231,242,
78 L. Ed. 413,431,
88 A. L. R. 1481

ASSIGNMENT NO. (7)

The Court of Appeals erred in holding that Section 83 (j) of the Bankruptcy Act (11 U. S. C. A. Sec. 403 (j) should not be construed

as having retroactive application to securities received and rights abandoned before its adoption.

The Petitioner cites authorities under this assignment to the effect that a statute is not to be construed as retroactive in its application unless it is imperative that no other meaning can be given to it. The Respondent agrees with the general rule that statutes are to be construed prospectively only unless it is clear that they were intended to be restropective. It will be noted that Sub-section (j) expressly refers to the partial completion of a plan of composition *before* or after the filing of the petition. If the taxing unit had not exchanged its bonds before the passage of Sub-section (j) it would, of course, obtain the consent of the holders of the original bonds and there would be no necessity to have the consent of the holders of the refunding bonds and in fact as pointed out by the Special Master (R. 135) "The act could mean nothing and have no effect whatever" except in a retroactive sense.

ASSIGNMENT NO. (8)

The Court of Appeals erred in failing to hold that if Section 83 (j) of the Municipal Bankruptcy Act be construed as applicable to the case at bar and as authorizing creditors whose rights are unchanged by a "plan of composition" to compel acceptance of that plan by creditors whose rights are materially curtailed by that plan, and as authorizing the use on Jan. 28, 1939, for the purpose of determining the solvency or insolvency of the City, the bonds voluntarily and irrevocably shrunk on Feb. 1,

1937, not at their shrunken figures, but at the expanded figures existing prior to the voluntary shrinkage, it is null and void as being in violation of the provisions of the Federal Constitution, particularly Amendment V."

The Petitioner attacks the statute under this assignment as being in violation of the Fifth Amendment to the Constitution of the United States. The Petitoner seeks to illustrate the injustice of a plan of composition whereby, for example, 4,000 creditors have accepted bonds for $1,000.00 each and seek to put a remaining 240 creditors holding bonds in the sum of $1040.00 each on a parity with themselves under a plan of composition which deprived the minority of $40.00 each. On this point the Special Master said: (R. 136) "It may take some of their property away from them; if so, the same thing will have happened to the consenting majority".

Equality is one of the principles of American jurisprudence.

The Petitioner loses sight of the fact that a plan of composition cannot be imposed upon objecting creditors unless it has the approval of the Court after finding that it is fair and equitable and does not discriminate. To allow the holders of less than 4% of the securities of a taxing unit to retain their bonds bearing original rates of interest while the holders of 96% of the securities of the taxing unit have sacrificed enormous sums of interest and as in the West Palm Beach case a large part of the principal of their obligations, would be a flagrant violation of the American principles of equality. In the present case the original bonds bore interest at rates ranging

from five to six per cent while the refunding bonds, Series A, bear interest rates ranging from 1 to 2½ percent. over a period of 40 years and Series B bonds bear interest rates ranging from 2 to 3 percent. over a period of 40 years.

Petitioner contends (Petition, p. 19) that respondents insolvency is to be determined as of the date of the presentation of the plan to the Court rather than that of its adoption, and cites (Brief, p. 45) the record of a legislative attempt to make this clear. This amendment, if passed, would have been only a legislative confirmation of decisions cited below on that point.

Several efforts have been made by recalcitrant minorities to take advantage of the sacrifices of the majority and the Courts have frowned upon such attempts and denied such claims.

In the case of In re Merced Irrigation District, 25 Fed. Supplement, 981, in which more than 90% of the holders of irrigation district bonds had accepted the plan of composition and transferred their bonds for approximately 50 cents on the dollar, a counterproposal of dissenting bondholders, by which they would receive 100% of the principal of their bonds, was held to be inequitable and would not be considered. The Court in that case said (text p. 985):

> "This, if adopted by the Court, would enable less than 10% of the bondholders of the district to reap an unjust enrichment at the expense of more than 90% of the same class of bondholders who have accepted the plan and who have voluntarily ended any control over their

bonds for approximately 50 cents on the dollar. Such is undoubtedly the effect of the proposal of the non-consenting bondholders because, under it, they are permitted to retain the outstanding bonds, which they now own or control, and merely conditionally agree to accept a reduction of interest on all coupons, matured and unmatured, to 3% per annum in lieu of 5½% or 6% stipulated in the bonds. We believe the suggested modification to be inequitable, discriminatory, illegally preferential and unjust. It not only financially penalizes approximately 91% of the bondholders who consented to the plan before the court, and for no reason except that such bondholders did consent, and thereby contributed to bring about the present improved outlook for the District, but it also classifies the bondholders of the Merced Irrigation District into two groups or classes, when equity and fair treatment in a composition under the Bankruptcy Act of 1938 all of such bondholders should be considered on an equality and dealt with on parity ....."

Again, in the case of In re Lindsay-Strathmore Irrigation District, 25 Fed. Supplement 988, the Court said (text 992):

"If there has been any improved financial condition in this District, such has been due, we think, principally to the conditional loan from R. F. C. and the cooperation of the assenting original bondowners. The attitude of the objectors has not been financially helpful in any way. The record before us shows that the bonds of the District had fallen in price since default

in 1933 to a low of twenty-two cents on the dollar. They are now saleable, because of the plan under consideration, at a fraction under sixty cents on the dollar of principal face value."

In the last above cited case the holders of approximately 87% of the original obligations had consented to the plan, and in the Merced Irrigation District Case, the holders of approximately 90% had consented.

In the case of In re Drainage District No. 7, 25 Fed. Supplement 372, 98.2% of bondholders and 88.5% of judgment creditors accepted a plan of composition of Drainage District No. 7 of Poinsett County, Arkansas, under Sections 81-84 of the Bankruptcy Act, to which plan certain creditors filed objections. The Reconstruction Finance Corporation had acquired the interests of the consenting creditors at a loss of about 74c out of every dollar to such creditors, and the objecting creditors contended that, in view of the reduction of the indebtedness, their claims were now worth 100c on the dollar, and the Court said (text p. 376):

"It had become evident that a minority were hanging back and seeking to obtain 100c on their minority debt as a result of the sacrifice of the majority, hoping that the district would become solvent as a result of the monies paid out by the Reconstruction Finance Corporation to consenting creditors.

"To prevent this kind of situation was the very purpose of the debt readjustment act and is the purpose of the 1937 debt composition act."

In conclusion, the respondent, City of Sanford, Florida, submits that the petitioner has not made a sufficient showing to ask this Honorable Court to review the decision of the Circuit Court of Appeals and that the writ of certiorari prayed for should be denied.

Respectfully submitted,

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